

DOLL AMIR & ELEY LLP
Hunter R. Eley (SBN 224321)
Hemmy So (SBN 259374)
1888 Century Park East
Suite 1850
Los Angeles, CA 90067
Telephone: (310) 557-9100
Facsimile: (310) 557-9101
E-mail: HEley@dollamir.com
HSo@dollamir.com

Attorneys for Defendant
CAPITAL ONE BANK (USA), N.A.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DEON L. THOMAS Pro Se

Plaintiff.

v.

**BLEIER & COX LLP, NCO
FINANCIAL SYSTEMS, INC.,
CAPITAL ONE BANK (USA), N.A.
and DOES 1 through 10,**

Defendants.

CASE NO. CV11-04428 AHM (OPx)

**ANSWER OF DEFENDANT
CAPITAL ONE BANK (USA), N.A.
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

DOLL AMIR & ELEY LLP
1888 Century Park East, Suite 1850
Los Angeles, CA 90067
(310) 557-9100

1 NOW COMES Defendant CAPITAL ONE BANK (USA), N.A. (“CAPITAL
2 ONE”), by and through its counsel, and hereby answers the Second Amended
3 Complaint filed by plaintiff DEON L. THOMAS (“Plaintiff”) and alleges as follows:

4 1. Answering Paragraph 1, Capital One admits that Plaintiff alleges violations
5 of the Fair Debt Collection Practices Act and Rosenthal Fair Debt Collection Practices
6 Act against defendants Bleier& Cox, LLP (“Bleier & Cox”) and NCO Financial System,
7 Inc. (“NCO”), and violations of the Fair Credit Reporting Act against Capital One.

8 2. Answering Paragraph 2, Capital One admits that Plaintiff makes allegations
9 about “actions and inactions” of the defendants and seeks damages, but denies that the
10 Second Amended Complaint (“SAC”) alleges that Capital One acted wrongfully with
11 respect to attempts to collect a debt allegedly owed by Plaintiff.

12 3. Answering Paragraph 3, Capital One does not have knowledge or
13 information sufficient to form a belief as to the truth of these allegations, and on that
14 basis, denies, generally and specifically, each and every averment contained herein.

15 4. Answering Paragraph 4, Capital One admits the SAC alleges violations of
16 statutes cited therein. As to the allegations of paragraph 4 that relate to other defendants,
17 Capital One does not have knowledge or information sufficient to form a belief as to the
18 truth of those allegations and, on that basis, denies, generally and specifically, each and
19 every allegation of paragraph 4 that relates to other defendants. Capital One denies,
20 generally and specifically, each and every remaining allegation of paragraph 4.

21 5. Answering Paragraph 5, as to the allegations of paragraph 5 that relate to
22 other defendants, Capital One does not have knowledge or information sufficient to form
23 a belief as to the truth of those allegations and, on that basis, denies, generally and
24 specifically, each and every allegation of paragraph 5 that relates to other defendants.
25 Capital One denies, generally and specifically, each and every remaining allegation of
26 paragraph 5.

1 **PRELIMINARY STATEMENT**

2 6. Answering Paragraph 6, Capital One admits that Plaintiff alleges he seeks
3 damages for violations of the FDCPA, Rosenthal Act and FCRA.

4 **JURISDICTION AND VENUE**

5 7. Answering Paragraph 7, Capital One admits that Plaintiff has alleged
6 jurisdiction based on the FDCPA, 15 U.S.C. § 1692 et seq. and FCRA, 15 U.S.C. §§
7 1681 et seq., the doctrine of supplemental jurisdiction, and diversity jurisdiction. Capital
8 One states that these are legal conclusions that are not subject to denial or admission.

9 8. Answering Paragraph 8, Capital One admits that Plaintiff has alleged venue
10 is proper in the Central District of California. Capital One states that these are legal
11 conclusions that are not subject to denial or admission.

12 9. Answering Paragraph 9, Capital One admits that Plaintiff has alleged venue
13 is proper in the Central District of California. Capital One states that these are legal
14 conclusions that are not subject to denial or admission.

15 10. Answering Paragraph 10, Capital One admits that Plaintiff has alleged
16 jurisdiction and venue. Capital One states that these are legal conclusions that are not
17 subject to denial or admission.

18 **PARTIES**

19 11. Answering Paragraph 11, Capital One does not have knowledge or
20 information sufficient to form a belief as to the truth of these allegations, and on that
21 basis, denies, generally and specifically, each and every averment contained herein.

22 12. Answering Paragraph 12, Capital is unable to respond to this allegation,
23 as it is incomplete.

24 13. Answering Paragraph 13, Capital One does not have knowledge or
25 information sufficient to form a belief as to the truth of these allegations, and on that
26 basis, denies, generally and specifically, each and every averment contained herein.
27
28

14. Answering Paragraph 14, Capital One admits that it is a “furnisher of information” as the term is used in FCRA section 1681s-2, 15 U.S.C. § 1681s-2, and that it furnishes information to Trans Union, Experian and Equifax.

16. Answering Paragraph 16, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

17. Answering Paragraph 17, Capital One admits that it provides credit services to consumers and furnishes information to credit reporting agencies, and that its corporate office is located at 15000 Capital One Drive, Richmond, VA 23238.

18. Answering Paragraph 18, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

STATEMENT OF FACTS

20. Answering Paragraph 20, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

21. Answering Paragraph 21, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

1 22. Answering Paragraph 22, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations, and on that
3 basis, denies, generally and specifically, each and every averment contained herein.

4 23. Answering Paragraph 23, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations, and on that
6 basis, denies, generally and specifically, each and every averment contained herein.

7 24. Answering Paragraph 24, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations, and on that
9 basis, denies, generally and specifically, each and every averment contained herein.

10 25. Answering Paragraph 25, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations, and on that
12 basis, denies, generally and specifically, each and every averment contained herein.

13 26. Answering Paragraph 26, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations, and on that
15 basis, denies, generally and specifically, each and every averment contained herein.

16 27. Answering Paragraph 27, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations, and on that
18 basis, denies, generally and specifically, each and every averment contained herein.

19 28. Answering Paragraph 28, Capital One does not have knowledge or
20 information sufficient to form a belief as to the truth of these allegations, and on that
21 basis, denies, generally and specifically, each and every averment contained herein.

22 29. Answering Paragraph 29, Capital One does not have knowledge or
23 information sufficient to form a belief as to the truth of these allegations, and on that
24 basis, denies, generally and specifically, each and every averment contained herein.

25 30. Answering Paragraph 30, Capital One does not have knowledge or
26 information sufficient to form a belief as to the truth of these allegations, and on that
27 basis, denies, generally and specifically, each and every averment contained herein.
28

1 31. Answering Paragraph 31, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations, and on that
3 basis, denies, generally and specifically, each and every averment contained herein.

4 32. Answering Paragraph 32, Capital One admits that it reported a debt owed
5 by Deon Thomas to Trans Union, Experian and Equifax. Capital One denies, generally
6 and specifically, each and every remaining averment contained herein.

7 33. Answering Paragraph 33, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations, and on that
9 basis, denies, generally and specifically, each and every averment contained herein.

10 34. Answering Paragraph 34, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations, and on that
12 basis, denies, generally and specifically, each and every averment contained herein.

13 35. Answering Paragraph 35, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations, and on that
15 basis, denies, generally and specifically, each and every averment contained herein.

16 36. Answering Paragraph 36, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations, and on that
18 basis, denies, generally and specifically, each and every averment contained herein.

19 37. Answering Paragraph 37, Capital One does not have knowledge or
20 information sufficient to form a belief as to the allegations regarding the actions of the
21 Credit Reporting Agencies. Capital One denies, generally and specifically, each and
22 every remaining averment contained herein.

23 38. Answering Paragraph 38, Capital One denies, generally and specifically,
24 each and every averment contained herein.

25 39. Answering Paragraph 39, Capital One denies, generally and specifically,
26 each and every averment contained herein.

40. Answering Paragraph 40, Capital One denies, generally and specifically, each and every averment contained herein.

Count 1

43. Answering Paragraph 43, Capital One repeats and re-alleges Paragraphs 1 through 42 of this Answer as though they were set forth herein in their entirety.

1 48. Answering Paragraph 48, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations, and on that
3 basis, denies, generally and specifically, each and every averment contained herein.

4 49. Answering Paragraph 49, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations, and on that
6 basis, denies, generally and specifically, each and every averment contained herein.

7 50. Answering Paragraph 50, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations, and on that
9 basis, denies, generally and specifically, each and every averment contained herein.

10 **Count II**

11 **VIOLATION OF THE ROSENTHAL CAL. CIVIL CODE§ 1788 et seq.**

12 **By Defendants Bleier and NCO**

13 51. Answering Paragraph 51, Capital One repeats and re-alleges Paragraphs 1
14 through 50 of this Answer as though they were set forth herein in their entirety.

15 52. Answering Paragraph 52, Capital One does not have knowledge or
16 information sufficient to form a belief as to the truth of these allegations, and on that
17 basis, denies, generally and specifically, each and every averment contained herein.

18 53. Answering Paragraph 53, Capital One does not have knowledge or
19 information sufficient to form a belief as to the truth of these allegations, and on that
20 basis, denies, generally and specifically, each and every averment contained herein.

21 54. Answering Paragraph 54, Capital One does not have knowledge or
22 information sufficient to form a belief as to the truth of these allegations, and on that
23 basis, denies, generally and specifically, each and every averment contained herein.

24 55. Answering Paragraph 55, Capital One does not have knowledge or
25 information sufficient to form a belief as to the truth of these allegations, and on that
26 basis, denies, generally and specifically, each and every averment contained herein.

64. Answering Paragraph 64, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

65. Answering Paragraph 65, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

66. Answering Paragraph 66, Capital One states these are legal conclusions that are not subject to denial or admission.

67. Answering Paragraph 67, Capital One states that Plaintiff's allegation regarding the definition of "account" is a legal conclusion that is not subject to admission or denial. Capital One does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis, denies, generally and specifically, each and every remaining averment contained herein.

68. Answering Paragraph 68, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

69. Answering Paragraph 69, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

70. Answering Paragraph 70, Capital One admits that Plaintiff seeks judgment against Bleier & Cox and NCO, statutory and punitive damages, and attorney's fees and costs. Capital One does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and on that basis, denies, generally and specifically, each and every remaining averment contained herein.

///

///

///

Count VI**VIOLATION OF THE FCRA 15 U.S.C. § 1681 et seq./§ 623****WILLFUL NON-COMPLIANCE NEGLIGENT NON-COMPLIANCE****By Defendants Cap**

71. Answering Paragraph 71, Capital One repeats and re-alleges Paragraphs 1 through 70 of this Answer as though they were set forth herein in their entirety.

72. Answering Paragraph 72, Capital One states these are legal conclusions that are not subject to denial or admission.

73. Answering Paragraph 73, Capital One admits that it is a furnisher of information as the term is used in 15 U.S.C. § 1681s-2.

74. Answering Paragraph 74, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis, denies, generally and specifically, each and every averment contained herein.

75. Answering Paragraph 75, Capital One admits that it received notifications from credit reporting agencies regarding disputes on an account associated with Deon Thomas. Capital One denies, generally and specifically, each and every remaining averment contained herein.

76. Answering Paragraph 76, Capital One admits that Plaintiff seeks judgment against Capital One, actual, statutory and punitive damages, and attorney's fees. Capital One denies generally and specifically, each and every remaining averment contained herein.

Count V**VIOLATION OF THE FCRA 15 U.S.C. § 1681 et seq./§ 623****By Defendants Cap**

77. Answering Paragraph 77, Capital One repeats and re-alleges Paragraphs 1 through 76 of this Answer as though they were set forth herein in their entirety.

1 78. Answering Paragraph 78, Capital One states these are legal conclusions that
2 are not subject to denial or admission.

3 79. Answering Paragraph 79, Capital One admits that it is a furnisher of
4 information as the term is used in 15 U.S.C. § 1681s-2.

5 80. Answering Paragraph 80, Capital One denies, generally and specifically,
6 each and every averment contained herein.

7 81. Answering Paragraph 81, Capital One admits that Plaintiff seeks judgment
8 against Capital One, actual, statutory and punitive damages, and attorney's fees. Capital
9 One denies generally and specifically, each and every remaining averment contained
10 herein.

11 **AFFIRMATIVE DEFENSES**

12 NOW WHEREFORE, having answered the SAC, Capital One asserts the
13 following affirmative defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 1. The SAC fails to state a claim upon which relief can be granted against
16 Capital One.

17 **SECOND AFFIRMATIVE DEFENSE**

18 2. Plaintiff has failed to mitigate his damages.

19 **THIRD AFFIRMATIVE DEFENSE**

20 3. Plaintiff is barred from any legal or equitable relief under each of the
21 purported causes of action in the SAC, to the extent Capital One has offsetting
22 claim(s).

23 **FOURTH AFFIRMATIVE DEFENSE**

24 4. No punitive damages are recoverable in this Action. Any award of
25 punitive damages against Capital One is unconstitutional.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 5. CAPITAL ONE alleges that its conduct was lawful, within its legal
28

1 rights, and were done with a good faith belief in the exercise of those rights. Further,
 2 under the circumstances, and based on information reasonably available to Capital
 3 One, Capital One acted in good faith in the honest belief that its acts, conduct and
 4 communications were justified.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 6. Capital One alleges that its alleged actions were not accompanied by
 7 actual malice, intent or ill will.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 7. Assuming *arguendo* that Capital One violated the FCRA, which Capital
 10 One denies, generally and specifically, such violation was not intentional, but a result
 11 of a bona fide error, notwithstanding the maintenance of procedures reasonably
 12 adapted to avoid such error.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 8. Capital One alleges that if Plaintiff was damaged in any sum or sums
 15 alleged, which Capital One denies, generally and specifically, each and every
 16 averment contained in the complaint, then Plaintiff's damages are limited by 15
 17 U.S.C. § 1681 et. seq.

18 **NINTH AFFIRMATIVE DEFENSE**

19 9. Plaintiff's claims are barred by the doctrine of unclean hands.

20 **TENTH AFFIRMATIVE DEFENSE**

21 10. Capital One reserves the right to allege and assert any additional and/or
 22 further affirmative defenses as become apparent to Capital One during the course of
 23 litigation.

24 WHEREFORE, Defendant CAPITAL ONE prays for judgment against Plaintiff
 25 as follows:

26 1. That the Second Amended Complaint be dismissed with prejudice in its
 27 entirety;
 28

2. That Plaintiff take nothing by reason of his Second Amended Complaint;
3. That judgment be entered in favor of Defendant CAPITAL ONE;
4. For recovery of Defendant CAPITAL ONE'S costs of suit, including its attorneys' fees to the extent recoverable by contract or law; and
5. For such other and further relief as the Court deems just.

Dated: November 1, 2011

DOLL AMIR & ELEY LLP

/s/ Hemmy So.

Hemmy So
Attorneys for Defendant
CAPITAL ONE BANK (USA), N.A.

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **1888 Century Park East, Suite 1850, Los Angeles, California 90067.**

On November 1, 2011, I served the foregoing document described as **ANSWER OF DEFENDANT CAPITAL ONE BANK (USA), N.A. TO PLAINTIFF'S SECOND AMENDED COMPLAINT** on the interested parties in this action by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1888 Century Park East, Suite 1850, Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- ☐ **BY OVERNIGHT DELIVERY:** I caused such documents to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressees. The envelope or package was deposited with delivery fees thereon fully prepaid.
- ☐ **BY ELECTRONIC MAIL:** I transmitted a true copy of said document(s) via electronic mail, and no error was reported. Said email was directed as indicated on the service list.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 1, 2011, at Los Angeles, California.

/s/ Felicia Dorn

Felicia Dorn

DOLL AMIR & ELEY LLP

SERVICE LIST

Deon L. Thomas
14626 Red Gum Street
Moreno Valley, CA 92555

T: (951) 413-9071
F: (951) 242-7015
Dlthomas32@gmail.com
Plaintiff in Pro Se

Harvey M. Moore, Esq.
Terri Lazo, Esq.
The Moore Law Group, APC
3710 S. Susan Street, Ste. 210
Santa Ana, CA 92704

T: (714) 431-2050
*Attorneys for Defendant Bieier & Cox
LLP*

Debbie P. Kirkpatrick, Esq.
Sessions, Fishman, Nathan & Israel, LLP
1545 Hotel Circle South, Ste. 150
San Diego, CA 92108

T: (619) 758-2892
*Attorney for Co-Defendant NCO
Financial Systems, Inc.*

DOLL AMIR & ELEY LLP